THE HON'BLE Ms. JUSTICE G.ROHINI

WRIT PETITION NO: 25638 of 2006

Dated: 11-12-2006

Between:

Mohd. Wajahath Ahmed

..... PETITIONER

AND

Deputy Transport Commissioner &
Secretary, Regional Transport Authority,
Nizamabad District and another.

.....RESPONDENTS

THE HON'BLE Ms. JUSTICE G.ROHINI

WRIT PETITION NO: 25638 of 2006

O R D E R:

The petitioner claims to be the registered owner of Idle Contract Carriage Vehicle bearing No. TN-32N-248 which was seized by the second respondent herein vide vehicle check report dated 09-10-2006. A perusal of check report shows that the vehicle was seized while it was parked in the premises of the second and third New Choultry, Thirupathi alleging that at the time of the check RC, IC, permit, driving licence were not produced. It was found that the vehicle came from Bodhan to Thirupathi with tourist party of 49 persons and that it was plying without permit, without tax and was used as State vide Contract Carriage. The petitioner pleaded that the vehicle in question was under repairs and therefore, from 31-03-2005 onwards the same has been kept in the workshop at Nizamabad, on intimation of stoppage report of the vehicle to the first respondent, who is the registering authority. Thereafter, since another vehicle belonging to the petitioner bearing No.AP 25T 6173 which was also kept in the same workshop for repairs was found to be unfit for usage on the roads, he had removed the Engine from of the vehicle bearing No. TN-32N-248 and replaced the Engine and chassis belonging to vehicle No.AP 25T 6173. The said alterations were carried out in the workshop itself and according to the petitioner such replacement of damaged parts is permissible under Section 52 of the Motor Vehicles Act, 1988. Hence, this writ petition contending that the seizure of the vehicle in question is arbitrary and illegal.

The learned counsel for the petitioner vehemently contended that since the replacement of the damaged parts is permissible under law, the action of the second respondent is arbitrary and illegal and at any rate it is not desirable to detain the vehicle till the enquiry is concluded by the first respondent.

The learned Government Pleader for Transport has placed before this Court, the instructions received from the first respondent which shows that though a show cause notice dated 12-10-2006 was issued to the petitioner, the same was returned un-served.

As can be seen from the documents filed along with the writ petition, it is clear that the petitioner has already made an application filed under Section 207(2) of Motor Vehicles Act, 1988 read with Rule 448 A and B of A.P.Motors Vehicles Rules 1989 requesting the first respondent to release the vehicle, pending enquiry.

The learned Government Pleader stated that the said application was received in the office of the first respondent on 28-11-2006, however, since certain relevant documents were not enclosed, the petition was returned.

Having regard to the facts and circumstances of the case and the nature of the allegations upon which the vehicle was seized, I deem it appropriate to leave it open to the first respondent to consider the request of the petitioner for release of the vehicle pending enquiry.

Accordingly, without expressing any opinion on merits, the writ petition is disposed of granting liberty to the petitioner to resubmit his application dated 06-11-2006 duly complying with the objections raised, in which event, the first respondent shall consider the same and pass appropriate orders in accordance with law within a period of one week from the date of resubmission of application. No costs.

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G. ROHINI, J

Dated: 11-12-2006

Note: Issue C.C in two days.

B/o

KLP